

3006194-LRB/SJE/msw

ARDC: 6206641

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LEWIS HERRING,)
v.)
Plaintiff,)
No. 07 C 7215
RICHARD E. MARR and FFE)
TRANSPORTATION SERVICES, INC.,)
an Illinois Corporation,)
Defendants.)

MOTION TO EXTEND AND AMEND THE DISCOVERY SCHEDULE

NOW COME the defendants, RICHARD E. MARR and FFE TRANSPORTATION SERVICES, INC., by and through their attorneys, Lew R.C. Bricker, Sandra J. Engelking, and SmithAmundsen LLC, and hereby move this Honorable Court to amend the previously ordered discovery schedule. In support of their Motion, Defendants state as follows:

1. On Monday, February 11, 2008, a status hearing was held before Judge Ronald Guzman, who ordered that fact discovery will close on June 10, 2008. (See Notification of Docket Entry attached as Exhibit "A".)

2. The next day, on February 12, 2008, written discovery (including interrogatories, a request to produce, a HIPAA Authorization and a Tax Authorization) was forwarded via Federal Express Priority Overnight to plaintiff's counsel. (See correspondence attached as Exhibit "B".)

3. Further, on March 17, 2008, defense counsel forwarded an Authorization for the release of records from the Department of Veteran's Affairs to plaintiff's counsel. (See correspondence attached as Exhibit "C".)

4. Defense counsel did not receive executed HIPAA and VA Authorizations from the plaintiff until April 14, 2008.

5. Defendants issued Subpoenas for plaintiff's medical, VA, and employment records, but were informed that the records would not be provided without the appropriate authorizations.

6. Defendants finally received a complete set of Subpoenaed records on June 4, 2008.

7. Plaintiff's deposition was originally scheduled for May 15, 2008, but was postponed because all medical, VA, and employment records had not yet been received.

8. Plaintiff's deposition was postponed to June 3, 2008, but was again postponed due to travel difficulties of the plaintiff.

9. Plaintiff's deposition recently proceeded on June 4, 2008.

10. During plaintiff's deposition, defense counsel learned of three additional VA medical facilities at which plaintiff treated for the injuries allegedly sustained in the accident involved in this matter. These facilities were not previously disclosed and, as such, defendants have not obtained those records.

11. Plaintiff also disclosed at his deposition a physician which he treated with prior to the accident for injuries to the same areas of his body he is claiming were injured in this accident. Defense counsel did not learn of this physician until the plaintiff's

deposition.

12. Defense counsel has issued records subpoenas to the additional medical treaters, but have yet to receive those records.

13. Defendants must review all of plaintiff's medical records and VA records in order to fully evaluate the matter prior to the close of fact discovery on June 10, 2008. Defendants do not yet have all of the plaintiff's records since several facilities were just disclosed at plaintiff's recent deposition.

14. Accordingly, Defendants respectfully request that this Court extend the discovery schedule in order to allow them time to collect and analyze all of the plaintiff's medical records and Department of Veterans' Affairs records.

WHEREFORE, Defendants, RICHARD E. MARR and FFE TRANSPORTATION SERVICES, INC., respectfully request that this Court enter an Order amending the discovery schedule and extending the time for the defendants to obtain the medical and VA records of the plaintiff from the facilities which were recently disclosed at the plaintiff's deposition. Defendants pray for further and other relief as this Court deems proper and just.

Respectfully submitted by,

S/ Lew R.C. Bricker
Lew R. C. Bricker - 6206641
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SmithAmundsen LLC
150 N. Michigan Avenue, Suite 3300
Chicago, IL 60601
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Lew R. C. Bricker
Sandra J. Engelking
Attorneys for Defendant, Richard E. Marr
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EXHIBIT “A”

Notification of Docket Entry

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 3.0
Eastern Division**

Lewis Herring

Plaintiff,

v.

Case No.: 1:07-cv-07215

Honorable Ronald A. Guzman

Richard E. Marr, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Monday, February 11, 2008:

MINUTE entry before Judge Ronald A. Guzman :Status hearing held on 2/11/2008. Amended pleadings and joinder of parties due by 5/12/2008. Fact discovery ordered closed by 6/10/2008. Status hearing set for 6/11/2008 at 09:30 AM.Mailed notice(cjg,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at www.ilnd.uscourts.gov.

EXHIBIT “B”

February 12, 2008 Correspondence

From: Origin ID: CHIA (312)894-3296
 Maria Wernes
 SMITHAMUNDSEN LLC
 150 N. Michigan Avenue
 Suite 3300
 Chicago, IL 60601



CLS120707/21/24

Ship Date: 12FEB08
 ActWgt: 1 LB
 System#: 5913719/INET8011
 Account#: S *****

Delivery Address Bar Code

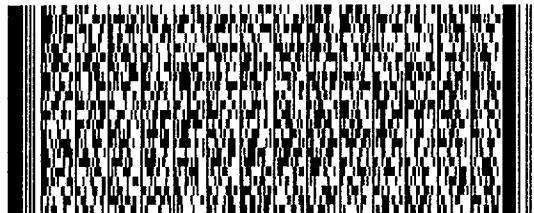


Ref # 3006194-LRB/SJE
 Invoice #
 PO #
 Dept #

SHIP TO: (815) 730-1977 BILL SENDER

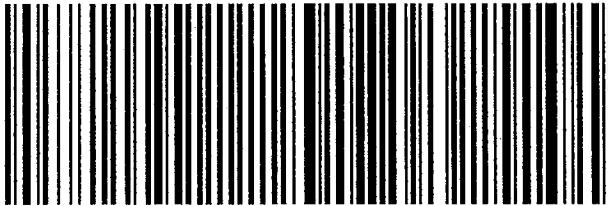
Mr. Scott Pyles
Rathbun Cservenyak & Kozol
3260 EXECUTIVE DR

JOLIET, IL 604318401

TRK# 7918 4856 7200
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Lew R. C. Bricker
Direct Dial: (312) 894-3224

February 12, 2008

VIA FEDERAL EXPRESS

Mr. Scott Pyles
Rathbun Cservenyak & Kozol LLC
3260 Executive Drive
Joliet, Illinois 60431

Re: Lewis Herring v. Richard E. Marr and FFE Transportation Services, Inc.
Court No.: 07 L 754
Our File: 3006194-LRB/SJE

Dear Mr. Pyles:

Given the expedited schedule the judge ordered, I think we need to move expeditiously with discovery. To that end, please forward your Rule 26 disclosures to my attention immediately. The idea of waiting for the 26a disclosure for a couple of more weeks makes no sense. Please include any and all responsive documents that you may have, including the medical records.

Accompanying this correspondence, please find a HIPAA Authorization to be executed by your client. Please have him do so quickly so that we might move to acquire his records directly from the providers.

Also, included are Interrogatories, a Request to Produce, Notice of Deposition and a Tax Authorization for your client to execute.

Thank you for your courtesy. I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink that reads "Lew R. C. Bricker". Above the signature, the initials "R.C.B." are handwritten. To the right of the signature, the letters "msw" are handwritten.

LRB/msw
Enclosures

EXHIBIT “C”

March 17, 2008 Correspondence



SmithAmundsen

Sandra J. Engelking
Direct Dial: (312) 894-3287

March 17, 2008

VIA FAXSIMILE (815) 730-1934

Mr. Scott Pyles
Rathbun Cservenyak & Kozol LLC
3260 Executive Drive
Joliet, Illinois 60431

Re: Lewis Herring v. Richard E. Marr and FFE Transportation Services, Inc.
Court No.: 07 L 754
Our File: 3006194-LRB/SJE

Dear Mr. Pyles:

Enclosed please find an Authorization for release of medical records from Viera Outpatient Clinic, which is required by the Department of Veterans Affairs. Please have your client execute this Release and fax back to my attention at (312) 894-3210.

In addition, I have also enclosed a HIPAA Authorization to be signed by your client which was forwarded to your attention in mid-February. Another copy is enclosed for your convenience.

Because of the tight discovery schedule the Court has ordered, please provide executed copies of both authorizations within 5 days of this request (on or by March 24, 2008). Please contact me should you have any questions or concerns regarding this matter. Thank you for your anticipated cooperation.

Sincerely,

Sandra J. Engelking

SJE
Enclosures